

The House Committee on Judiciary Non-civil offers the following substitute to HB 749:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,
2 relating to theft, so as to provide for the crime of cargo theft; to provide for definitions; to
3 provide for penalties; to provide for the crime of unlawful possession or use of a fifth wheel;
4 to amend Code Section 35-3-4 of the Official Code of Georgia Annotated, relating to powers
5 and duties of the Georgia Bureau of Investigation generally, so as to provide the GBI with
6 jurisdiction with regard to cargo theft; to provide for related matters; to provide an effective
7 date and for applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
11 is amended by adding new Code sections to read as follows:

12 "16-8-22.

13 (a) For purposes of this Code section, the term 'vehicle' includes, without limitation, any
14 railcar.

15 (b) Notwithstanding any provision of this article to the contrary, a person commits the
16 offense of cargo theft when he or she unlawfully takes or, being in lawful possession
17 thereof, unlawfully appropriates:

18 (1) Any vehicle engaged in commercial transportation of cargo or any appurtenance
19 thereto, including, without limitation, any trailer, semitrailer, container, or other
20 associated equipment, or the cargo being transported therein or thereon, which is the
21 property of another with the intention of depriving such other person of the property,
22 regardless of the manner in which the property is taken or appropriated; or

23 (2) Any trailer, semitrailer, container, or other associated equipment, or the cargo being
24 transported therein or thereon, which is deployed by or used by a law enforcement
25 agency, which is the property of another with the intention of depriving such other person
26 of the property, regardless of the manner in which the property is taken or appropriated.

27 (c) The value of a vehicle engaged in commercial transportation of cargo and any
28 appurtenance thereto and the cargo being transported which is taken or unlawfully
29 appropriated shall be based on the fair market value of such vehicle, appurtenances, and
30 cargo taken or unlawfully appropriated.

31 (d)(1) If the property taken is one or more controlled substances as defined in Code
32 Section 16-13-21 with a collective value of less than \$10,000.00, a person convicted of
33 a violation of this Code section shall be punished by imprisonment for not less than one
34 nor more than ten years, a fine of not less than \$10,000.00 nor more than \$100,000.00,
35 or both.

36 (2) If the property taken is one or more controlled substances as defined in Code
37 Section 16-13-21 with a collective value of at least \$10,000.00 but less than \$1 million,
38 a person convicted of a violation of this Code section shall be punished by imprisonment
39 for not less than five nor more than 25 years, a fine of not less than \$50,000.00 nor more
40 than \$1 million, or both.

41 (3) If the property taken is one or more controlled substances as defined in Code
42 Section 16-13-21 with a collective value of \$1 million or more, a person convicted of a
43 violation of this Code section shall be punished by imprisonment for not less than ten nor
44 more than 30 years, a fine of not less than \$100,000.00 nor more than \$1 million, or both.

45 (e)(1) Except as otherwise provided in subsection (d) of this Code section, if the property
46 taken has a collective value of \$1,500.00 or less, a person convicted of a violation of this
47 Code section shall be punished as for a misdemeanor.

48 (2) Except as otherwise provided in subsection (d) of this Code section, if the property
49 taken has a collective value of more than \$1,500.00 but less than \$10,000.00, a person
50 convicted of a violation of this Code section shall be punished by imprisonment for not
51 less than one nor more than ten years, a fine of not less than \$10,000.00 nor more than
52 \$100,000.00, or both.

53 (3) Except as otherwise provided in subsection (d) of this Code section, if the property
54 taken has a collective value of at least \$10,000.00 but less than \$1 million, a person
55 convicted of a violation of this Code section shall be punished by imprisonment for not
56 less than five nor more than 20 years, a fine of not less than \$50,000.00 nor more than
57 \$1 million, or both.

58 (4) Except as otherwise provided in subsection (d) of this Code section, if the property
59 taken has a collective value of \$1 million or more, a person convicted of a violation of
60 this Code section shall be punished by imprisonment for not less than ten nor more than
61 20 years, a fine of not less than \$100,000.00 nor more than \$1 million, or both.

62 (f) Notwithstanding subsections (d) and (e) of this Code section, if the property taken is
63 a trailer, semitrailer, container, or other associated equipment, or the cargo being

64 transported therein or thereon, which is deployed by or used by a law enforcement agency,
 65 regardless of its value, a person convicted of a violation of this Code section shall be
 66 punished by imprisonment for not less than one nor more than ten years, a fine of not less
 67 than \$10,000.00 nor more than \$100,000.00, or both.

68 (e) A person convicted of a violation of this Code section may also be punished by, if
 69 applicable, the revocation of the defendant's commercial driver's license in accordance with
 70 Code Section 40-5-151.

71 16-8-23.

72 (a) For the purposes of this Code section, the term 'fifth wheel' means a device mounted
 73 on a truck tractor or similar towing vehicle, including, but not limited to, a converter dolly,
 74 which interfaces with and couples to the upper coupler assembly of a semitrailer.

75 (b) It shall be unlawful for any person to modify, alter, attempt to alter, and, if altered, sell,
 76 possess, offer for sale, move, or cause to be moved on the highways of this state a device
 77 known as a fifth wheel or the antitheft locking device attached to the fifth wheel with the
 78 intent to use the fifth wheel to commit or attempt to commit cargo theft as defined in Code
 79 Section 16-8-22.

80 (c) A person convicted of a violation of this Code section shall be punished by
 81 imprisonment for not less than one nor more than ten years, a fine of not less than
 82 \$10,000.00 nor more than \$100,000.00, or both."

83 **SECTION 2.**

84 Said article is further amended by revising paragraph (8) of subsection (a) of Code
 85 Section 16-8-12, relating to penalties for theft in violation of Code Sections 16-8-2 through
 86 16-8-9, as follows:

87 ~~"(8) If the property that was the subject of the theft was a vehicle engaged in commercial~~
 88 ~~transportation of cargo or any appurtenance thereto, including, without limitation, any~~
 89 ~~such trailer, semitrailer, container, or other associated equipment, or the cargo being~~
 90 ~~transported therein or thereon, by imprisonment for not less than three years nor more~~
 91 ~~than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if~~
 92 ~~applicable, the revocation of the defendant's commercial driver's license in accordance~~
 93 ~~with Code Section 40-5-151, or any combination of such penalties. For purposes of this~~
 94 ~~paragraph, the term 'vehicle' includes, without limitation, any railcar Reserved; or".~~

95 **SECTION 3.**

96 Code Section 35-3-4 of the Official Code of Georgia Annotated, relating to powers and
97 duties of the Georgia Bureau of Investigation generally, is amended by revising
98 subsection (a) to add a new paragraph to read as follows:

99 "(11.1) Identify and investigate violations of Code Sections 16-8-22 and 16-8-23;".

100 **SECTION 4.**

101 This Act shall become effective on July 1, 2014, and shall apply to all offenses committed
102 on or after such date. The enactment of Code Sections 16-8-22 and 16-8-23 shall not affect
103 any prosecutions for acts occurring before the effective date of Code Sections 16-8-22 and
104 16-8-23 and shall not act as an abatement of any such prosecutions.

105 **SECTION 5.**

106 All laws and parts of laws in conflict with this Act are repealed.